

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT CLARIFICATION NO. 6-85:

LOLO SCHOOL DISTRICT, NO. 7	)	
LOLO, MONTANA,	)	
	)	
Petitioner,	)	FINDINGS OF FACT;
	)	CONCLUSIONS OF LAW;
and	)	RECOMMENDED ORDER
	)	
MONTANA EDUCATION ASSOCIATION,	)	
	)	
Respondent.	)	

\* \* \* \* \*

A hearing to determine whether the Business Assistant/ Payroll Supervisor is properly a member of the bargaining unit of classified employees in Lolo School District No. 7, Lolo, Montana was held on February 24, 1986 in Lolo, Montana. The hearing was held under the authority of Section 39-31-207 MCA and ARM 24.26.630(5) and in accordance with the Administrative Procedures Act, Title 2, Chapter 4, MCA. Petitioner was represented by Chadwick H. Smith of the Smith Law Firm, Helena, Montana. Respondent was represented by Emilie Loring of the law firm of Hilley & Loring, Great Falls, Montana. Linda Skaar was Hearing Examiner.

Having carefully reviewed the record, including sworn testimony and evidence, these are my findings of fact:

FINDINGS OF FACT

1. The Montana Education Association represents the unit of classified employees in Lolo School District No. 7. Employees included in this unit are the business assistant, executive secretary, district secretary, secretary K-5, aide, maintenance person, custodian, cooks I and II, the kitchen helper, nurse and all other classified staff except the school district clerk and supervisors. At the unit clarification hearing the parties agreed that henceforth the school lunch supervisor would not be included in the unit.

1 With the exception of the custodians and the business  
2 assistant, all the positions in the unit are 10 month  
3 positions.

4 2. The clerical functions of the school district were  
5 reorganized and in January 1985, Becky Ellis was hired to  
6 fill a newly created position called Business Assistant.  
7 Ms. Ellis was paid \$6.00 per hour and was scheduled to work  
8 10 months a year. Duties of the position were:

- 9 1. Count and balance all lunch receipts.
- 10 2. Make all Activity Account deposits.
- 11 3. Telephone back-up.
- 12 4. Assist student council treasurer with proper  
13 depositing of their monies and record keeping  
14 (gives advice).
- 15 5. Types purchase orders.
- 16 6. Prepares supply room list and orders supplies.
- 17 7. Record keeping of all categories of lunch re-  
18 cepts.
- 19 8. Business office back-up.

20 3. In July, 1985, due to an increased work load in  
21 the business office, Ms. Ellis was called back to work. Her  
22 position was made a 12 month position and she was given  
23 increased duties and responsibilities. Her position title  
24 was changed to Business Assistant/Payroll Supervisor. Major  
25 functions of her position were now:

- 26 1. To maintain accurate records of all local  
27 Food Service receipts.
- 28 2. To make all deposits in connection with the  
29 Lolo School Activity Account.
- 30 3. To organize and maintain records of all  
31 requisitions for supplies and subsequent  
32 purchase orders in accordance with policies  
of the Lolo School District Board of Trustees  
[emphasis added]. (See Finding of Fact #7)
4. To maintain educational and office supplies  
inventory control.
5. To be familiar with all Business Office  
procedures so as to be an effective Business  
Office back-up person in the absence of the  
Business Manager.
6. To receive monthly time sheets for all  
district employees and record overtime,  
vacation, personal, and sick leave and other  
variations from regular work schedules  
[emphasis added].
7. To post leaves to employment permanent  
records.
8. To post salary variations.

9. To assist in preparing data for various tabular reports as required for federal and state agencies.
10. To answer inquiries from employees regarding payroll and benefits matters.
11. To serve as an administrative resource person relative to salaries and collective bargaining data.

The school district had recently purchased a computer. Ms. Ellis was taught to use the computer by the company which sold it to the district. She has become the most expert computer operator in the district. She keeps all the payroll records on the computer.

4. The Trustees of each school district in Montana are required to appoint a school clerk (Section 20-3-325 MCA). The Clerk in Lolo School District No. 7, is Marcia Harrison who is also the Business Manager of the District. Ms. Harrison is supervised by Richard Heath, Superintendent of Schools and she, in turn, supervises Business Assistant Becky Ellis who acts as her assistant.<sup>1</sup> Ms. Ellis supervises no one.

School District Clerks are exempt from coverage of the Collective Bargaining Act for Public Employees by Section 39-31-103(2)(b)(vii) MCA.

5. When Ms. Ellis's position changed in July, 1985, she negotiated a salary increase directly with management. She is now paid \$7.02 per hour (\$14,600 a year) and receives time and one-half for overtime. Ms. Ellis's salary is neither the highest or lowest in the bargaining unit.

6. The Lolo School District is a small district and

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<sup>1</sup>"The Lolo School District No. 7 Board of Trustees adheres to the 'unit control' concept of management, which places direct administrative responsibilities upon the superintendent with the business official and other personnel reporting directly to the superintendent." (Petitioner's Ex. #3)

1 there is only one person with purchasing or payroll duties.  
2 Ms. Ellis has little interchange with other members of the  
3 unit.

4 Ms. Ellis receives the same benefits as other classif-  
5 ied employees in the school district. These benefits  
6 include retirement, medical insurance, sick leave, vacation,  
7 etc. She works an 8 hour day and a 40 hour week as do the  
8 other employees. The custodians and Ms. Ellis work 12  
9 months a year. Other employees in the bargaining unit work  
10 10 months a year.

11 Ms. Ellis does not wish to be a member of the Montana  
12 Education Association.

13 7. On October 3, 1985, the Board of Trustees adopted  
14 a new policy on purchasing procedures. Pertinent provisions  
15 of these new procedures are as follows:

- 16 1. Only the signatures of the District Superin-  
17 tendent, Principal, or Supervisor, and  
Business Manager will commit the district to  
a purchase.
- 18 2. Satisfactory quality of the item to be  
19 purchased will be determined by the requis-  
itioner, the Principal or the Supervisor.
- 20 3. A source of supply is to be included on  
requisitions.
- 21 4. It is the responsibility of the Principal or  
22 the Supervisor to make alternate suggestions  
to the requisitioner if they think the  
specifications would restrict competition or  
preclude the most economical purchase.
- 23 5. When a low bidder proposes an alternate as  
24 "an equal" to that specified, it is the  
responsibility of the Principal or Supervisor  
25 to determine whether it is equal. This  
evaluation is to include that of a requis-  
itioner.
- 26 6. Each requisitioner is responsible to see that  
27 the amount of the requisition is within the  
appropriated amount for his unit, it must be  
28 verified for the adequacy of the budgetary  
information and must be signed by the Princi-  
29 pal or Supervisor and the District Superin-  
tendent.
- 30 7. Purchase orders must be signed by the Dis-  
31 trict Superintendent, Principal, or Super-  
visor and the Business Manager.

32 Nowhere do these procedures mention the Business

1 Assistant.

2 The provisions of Section 20-9-204 MCA require that  
3 School District Trustees advertise for bids on purchases  
4 exceeding \$7,500.00. The contract must be awarded to the  
5 lowest bidder.

6 DISCUSSION

7 Petitioner advances two main arguments to support the  
8 contention that the position of Business Assistant should be  
9 removed from the unit. The first of these arguments fol-  
10 lows: The school trustees are required by Section 20-3-325  
11 MCA to appoint a clerk of the district. Since school clerks  
12 are not considered public employees under Section 39-31-103  
13 (2)(b)(vii) of the Collective Bargaining for Public Employ-  
14 ees Act, then a person who acts as assistant clerk is  
15 likewise not considered a public employee. Analyzing this  
16 argument, we find that Section 20-3-325 MCA requires the  
17 Trustees to appoint "a" clerk not multiple clerks. Section  
18 39-31-103(2)(b)(vii) MCA also speaks of "a" school district  
19 clerk. There is nothing to lead us to believe that these  
20 two sections of law do not speak to the same position - a  
21 single district clerk in each school district. If Section  
22 39-31-103(b)(vii) of the Collective Bargaining for Public  
23 Employees Act contemplated excluding multiple clerks in each  
24 school district, we would have a situation where all  
25 "clerks" or clerical employees in any school district could  
26 be excluded from the protection of the Act. Such a reading  
27 of the Public Employees Collective Bargaining Act is not  
28 logical. Surely, if the Legislature had intended such a  
29 massive exclusion it would have enumerated those positions  
30 to be excluded as it did with school administrators, profes-  
31 sional nurses, engineers etc. We must conclude that both  
32 sections of the statute speak to one position in each school

1 district--the single clerk position created by Section  
2 20-3-325 MCA. The position of Business Assistant cannot be  
3 exempt from the unit under this theory.

4 Petitioner's second argument is that the payroll and  
5 purchasing duties performed by the Business Assistant are  
6 such as to make her a management employee. Management offi-  
7 cials, or those who are representatives of management having  
8 authority to act for the agency on any matters relating to  
9 the implementation of agency policy are, like school dis-  
10 trict clerks, excluded from the protections of the Act,  
11 Section 39-31-103 MCA.

12 The Board of Personnel Appeals has consistently con-  
13 strued this definition very narrowly, augmenting it with the  
14 definition of management employee adopted by the National  
15 Labor Relations Board.<sup>2</sup> The NLRB defines managerial employ-  
16 ees as those who formulate and effectuate management polic-  
17 ies by expressing and making operative the decisions of  
18 their employer. In 1974, the U. S. Supreme Court noted  
19 approvingly that the lower courts had approved the NLRB's  
20 definition "without exception".<sup>3</sup> In General Dynamics Corp.,  
21 Convair Aerospace Division,<sup>4</sup> the Board explained the appli-  
22 cation of this definition, "managerial status is not confer-  
23 red upon rank-and-file workers, or upon those who perform  
24 routinely, but rather is reserved for those in executive  
25 type positions, those who are closely aligned with manage-  
26 ment as true representatives of management. They further  
27 noted that professional employees are not the same as  
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29 <sup>2</sup>AFSCME and the City of Kalispell, UC 3-83

30 <sup>3</sup>NLRB v. Textron, Inc., 416 US 267(1974).

31 <sup>4</sup>213 NLRB 124, 87 LRRM 1705 (1974)

1 management and "technical expertise in administrative  
2 functions which may involve the exercise of judgment and  
3 discretion does not confer executive type status upon the  
4 performer."

5 In this unit clarification which involves the Business  
6 Assistant who acts as purchasing agent for the school  
7 district, the Textron case, supra, is of particular signifi-  
8 cance. It, too, involved buyers. The U. S. Supreme Court  
9 remanded that case for the NLRB to determine whether the  
10 Textron buyers were managerial employees. Concluding that  
11 the buyers were not managerial employees because they did  
12 not exercise sufficient independent discretion in their jobs  
13 to truly align themselves with management, the NLRB noted  
14 that while the buyers were in a position to commit the  
15 employer's credit up to \$5,000, the discretion and latitude  
16 for independent action took place within the confines of the  
17 general directions the employer had established. The Board  
18 noted that a standard order might merely require the buyer  
19 to turn a requisition into a purchase order where the buyer  
20 would merely affix his signature since "the department which  
21 originated the requisition has already designated the  
22 vendor, price, quantity, etc." Many of the items purchased  
23 were repetitive or off-the-shelf. In Lockheed Aircraft  
24 Corp.,<sup>5</sup> the Board also excluded buyers on the grounds that  
25 their activities were circumscribed either by the employer's  
26 established policy or by review power placed in higher  
27 authority. In Simplex Industries,<sup>6</sup> the NLRB found the buyer  
28 was a managerial employees because he had broad discretion  
29

30 <sup>5</sup> 217 NLRB No. 93, 89 LRRM 1289 (1975)

31 <sup>6</sup> 243 NLRB No. 13, 101 LRRM 1466 (1979)

1 in handling managerial matters and was not restricted by  
2 fixed policies established by the employer. He performed  
3 his job without the assistance of employer imposed procure-  
4 ment policies, there was no employer imposed list of vendors  
5 and the buyer used sales statistics in determining how much  
6 material would be required and when it would be required.

7 In this case, the purchasing activities of the Business  
8 Assistant are circumscribed by the purchasing policy and  
9 procedures adopted by the school board. Further, her  
10 purchasing activities are circumscribed by the review power  
11 of higher authority. Any purchase must be approved by the  
12 Superintendent at the requisition stage before it is turned  
13 into a purchase order by Ms. Ellis. Even though the prior  
14 approval of the Superintendent is required, Ms. Ellis still  
15 has no authority to sign a purchase order. A purchase order  
16 must be signed by the Business Manager (school district  
17 clerk) and the Superintendent. The requisitioner is respon-  
18 sible for determining whether the amount of the requisition  
19 is within the appropriated amount for his unit. The requis-  
20 itioner, principal or superintendent are responsible for  
21 determining quality. The requisitioner must include a  
22 source of supply on his requisition. While Ms. Ellis may  
23 very well use her technical expertise in purchasing to  
24 assist the requisitioner and others, the ultimate responsi-  
25 bility for complying with purchasing policy is theirs, not  
26 hers. All purchasing activity within the school district is  
27 circumscribed by School Board policy and the review power  
28 placed in higher authority.

29 The technical expertise displayed by Ms. Ellis in  
30 handling the payroll is just that--technical expertise.  
31 While technical expertise may involve the exercise of  
32 judgment and discretion, it does not confer executive type



1 status upon the performer. General Dynamics Corp., supra.

2 The position of Business Assistant, while a responsible  
3 technical position, does not meet the test adopted for  
4 determining managerial status. Having failed this test,  
5 there appears to be no other reason for exempting the  
6 position from the unit. Ms. Ellis is not a supervisor.  
7 While the position has little interchange with other employ-  
8 ees in the unit it can be assumed that in a unit as diverse  
9 as this there will be less exchange among employees than  
10 there would be in a unit where the work force all perform  
11 similar functions. Ms. Ellis has a different immediate  
12 supervisor than the other positions but so do the cooks. In  
13 addition all positions within the school district are  
14 ultimately answerable to the Superintendent and the Board of  
15 Trustees. Ms. Ellis's wages fall within the range of wages  
16 paid to other employees in the unit and she enjoys similar  
17 benefits. While it is true that Ms. Ellis does not wish to  
18 be a member of the Montana Education Association, inclusion  
19 of her position in the unit will not require her to be a  
20 member of the Association. The position of Business Assis-  
21 tant is properly within the bargaining unit.

#### 22 CONCLUSION OF LAW

23 The position classified as Business Assistant/Payroll  
24 Supervisor is not managerial as that term is defined by  
25 Section 39-31-03 MCA.

#### 26 RECOMMENDED ORDER

27 The position classified as Business Assistant/Payroll  
28 Supervisor is properly included in the bargaining unit  
29 comprised of classified employees of Lolo School District 7  
30 represented by respondent, Montana Education Association.  
31  
32

1 DATED this 24th day of August, 1986

2 BOARD OF PERSONNEL APPEALS

3  
4  
5 By: Linda Skaar

6 Linda Skaar  
7 Hearing Examiner

8 NOTICE

9 Written exceptions to these Findings of Fact, Conclu-  
10 sions of Law and Recommended Order may be filed within  
11 twenty days. If no exceptions are filed with the Board Of  
12 Personnel Appeals within that time, the Recommended Order  
13 shall become the Final Order of the Board. Exceptions shall  
14 be addressed to the Board of Personnel Appeals, P. O. Box  
15 1728, Helena, Montana 59624.

16 \* \* \* \* \*

17 CERTIFICATE OF MAILING

18 I, Linda Skaar, do certify that a true and  
19 correct copy of this document was mailed to the following on  
20 the 2nd day of September, 1986.

21 Emilie Loring  
22 Hilley & Loring  
23 121 Fourth St. N.  
24 Suite 2G  
25 Great Falls, MT 59401

26 Chadwick H. Smith  
27 Smith Law Firm  
28 P. O. Box 604  
29 Helena, MT 59624

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31  
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